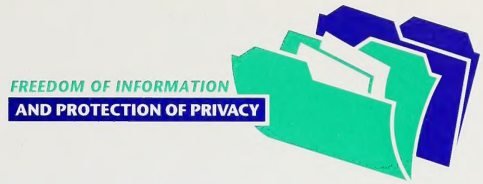
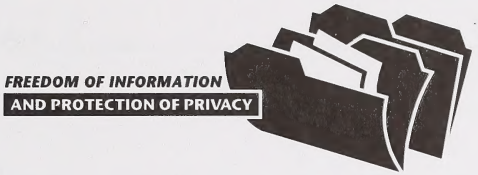


FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

A Guide

Alberta

GOVERNMENT OF ALBERTA



Freedom of Information and Protection of Privacy:

A Guide

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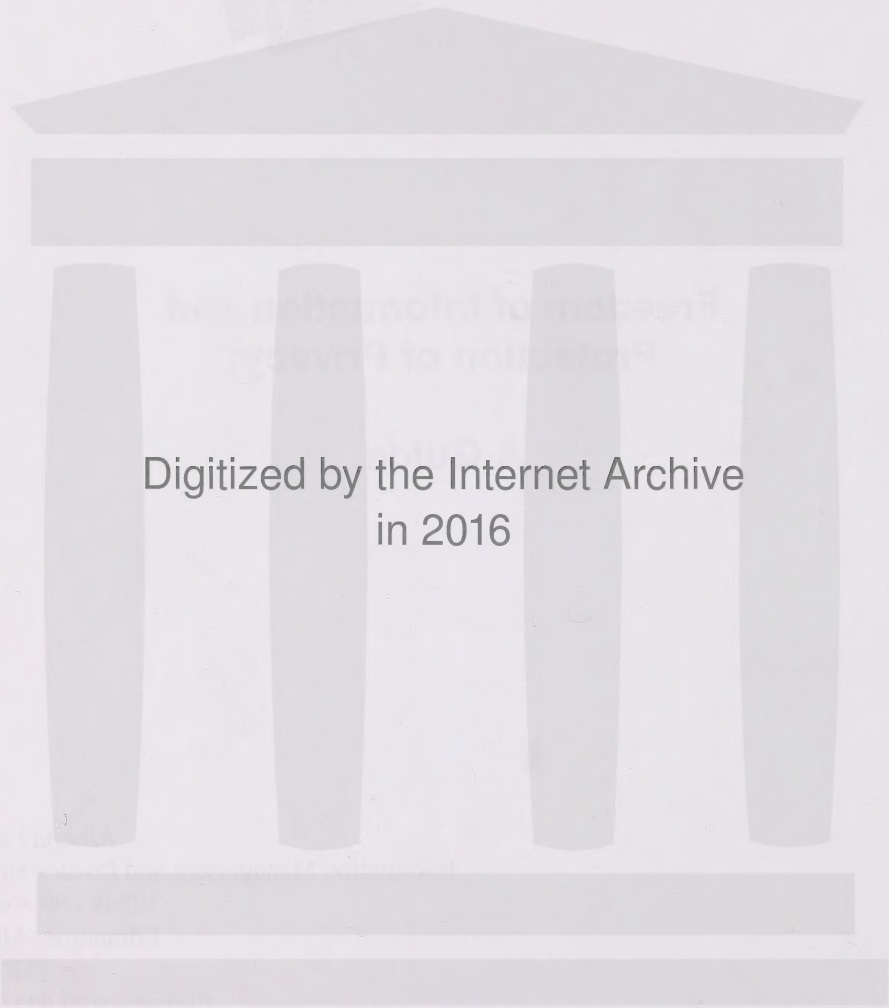

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INTRODUCTION

This guide provides an overview of Alberta's *Freedom of Information and Protection of Privacy Act* and the regulation made under the *Act* (also referred to as the *FOIP Act* and the *FOIP Regulation).* We wish to thank Alberta Justice for allowing one of their documents to be adapted for this guide.

The *FOIP Act* was introduced in the Alberta Legislature in the spring of 1994 following an extensive public consultation process by an All-Party Panel. The *Act,* which reflects the recommendations of the All-Party Panel and the input of Albertans, is seen as the cornerstone of an open, accessible and accountable government to the people of Alberta. It was proclaimed in force on October 1, 1995 for public bodies such as government departments, agencies, boards, commissions and other bodies made subject to its provisions by the *FOIP Regulation.*

When the *Act* was first introduced, a commitment was made to extend its scope to include local public bodies, such as schools, health authorities, post-secondary educational institutions and municipalities. Planning is now underway to implement the *Act* in these areas in a phased manner.

The definitions of the terms "public body" and "local public body" are found in **section 1** of the *Act.* "Public body," by definition, includes a local public body. Where the term "public body" is used in this guide, it is also meant to include a local public body.

This guide is published by the Information Management and Privacy Branch on behalf of the Minister of Labour. The Minister is responsible for the overall administration of the FOIP legislation. Further information on the *FOIP Act* and *Regulation* may be obtained by contacting:

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TWO MAJOR PARTS TO THE ACT

There are two major parts to the *Act*:

- **Part 1** which deals with access to records held by public bodies as defined under the *Act;* and
- **Part 2** which deals with rules concerning the protection of privacy of the personal information of individuals that is held by public bodies.

FUNDAMENTAL PRINCIPLES

There are five fundamental principles that provide the building blocks upon which the *Act* is based. These are:

1) To allow a right of access to any person to the records in the custody or control of a public body subject only to **limited** and **specific** exceptions;
2) To control the manner in which a public body may **collect** personal information from individual Albertans; to control the **use** that a

public body may make of that information; and to control the **disclosure** by a public body of that information;

3) To allow individuals, subject to **limited** and **specific** exceptions, the right to have access to information about themselves which is held by a public body;

4) To allow individuals the right to **request corrections** to information about themselves held by a public body; and

5) To provide an **independent review** of decisions made by a public body under the legislation.

It is from these principles that the *Act* has been developed and it is in this light that its provisions can be examined more closely. These principles are set out in **section 2** of the *Act*.

WHAT THE ACT APPLIES TO

The access provisions of the *Act* apply to all records in the custody or control of a public body, whether they are written records, photographic records or any other record recorded or stored in any way.

The term "record" is defined in **section 1(1)(q)** of the *Act* and includes books, documents, correspondence, plans, blueprints, maps, drawings, photographs, letters, vouchers, computer tapes, diskettes, notes and draft materials.

The definition also includes a record that does not yet exist but which can be created from existing data in a computer system **(section 9(2)(a))**.

For example, the public body may generate a report from data in a computer file. A requester may ask for a different report to be produced from the same data sorted or presented differently. The public body would have an obligation to create this "new" record only if it could do so using its normal computer hardware, software and technical expertise and the effort would not unreasonably interfere with the operations of the body.

Software or any other mechanism that produces records is not covered by the legislation.

WHAT THE ACT DOES NOT APPLY TO

There are some limited circumstances in which the *Act* does not apply. Some of these situations include records that are available outside of the *Act* such as those found in court files, in a registry such as the Land Titles Office, or information which would not normally be available such as personal notes or draft decisions of judges and persons exercising similar powers.

Other examples of excluded records are teaching materials or research information of employees of a post-secondary educational body; a question that is to be used on an examination or test; or a record of an elected official of a local public body that is not in the custody or under the control of the local public body **(section 4)**.

WHAT IS MEANT BY CUSTODY AND CONTROL

Custody generally means physical possession of a record by a public body. This includes situations where the business records of a third party are stored on the premises of the public body. There may also be situations where the public body uses a records storage centre. In such circumstances, the public body still has custody of the records.

A record is under the **control** of a public body when that body has the authority to manage the record throughout its life-cycle, including directing and administering its use or disclosure. For example, a record is under the control of a public body where:

- a record was created by an outside consultant for the public body;
- a record is closely integrated with the records of the public body and is relied upon by it in carrying out operations or services;
- a record is part of those specified by the public body in a contract as being under its control; or
- a contract permits the public body to inspect, review or copy records produced, received or acquired by another party.

Where a record is created pursuant to a contract, legal agreement or in some other way, the public body may have an option as to whether or not it has access to a record. The public body has control of the record unless a contract stipulates otherwise. However, even though the custody and control of records may be reduced through a contract, the legal requirements of the *FOIP Act* may continue to apply. Where a contractor provides services for a public body, records are under the control of the public body unless the contract directly stipulates otherwise.

Public bodies should specifically and clearly indicate through provisions in contracts or agreements the type of records to which they will have control.

EXISTING INFORMATION PRACTICES

Although the *Act* sets out a single scheme for access to records of a public body, it does not replace other existing procedures or limit access to information of a public body normally available to the public. This is subject, of course, to the rules on collection, use and disclosure of personal information contained in the *Act.* It will provide a procedure where none existed before.

It also does not affect access to records deposited in the Provincial Archives of Alberta or the archives of a public body that were unrestricted before the *Act* came into force. In addition, it will not prohibit the transfer, storage or destruction of any record in accordance with any other enactment of Alberta or Canada or a by-law of a local government body, except where personal information is concerned. The *Act* requires public bodies to retain personal information for at least one year after using it to make a decision **(section 34(b)).**

The *Act* does not limit the information otherwise available by law to a party to legal proceedings and does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents **(section 3)**.

The *Act* encourages public bodies to designate categories of records that can be made available to those requesting them without a FOIP request **(section 83)**. These categories can be made available either without charge or under special fee structures established by the public body.

This more routine release of information will often avoid the more complex processing of FOIP requests.

Also provisions must be made by public bodies to allow inspection of manuals, handbooks or other guidelines used by their officials and employees in decision-making processes affecting the public **(section 84)**.

PUBLIC BODIES COVERED BY THE ACT

The *Act* currently applies to government departments as well as agencies, boards, commissions, corporations, offices and other bodies made subject to its provisions by the *FOIP Regulation*.

There are other bodies that have a significant impact on the public of Alberta. It is the government's intention that local public bodies be subject to access and protection of privacy legislation including:

- local governments such as counties, cities, towns, villages and municipalities;
- local school boards;
- Regional Health Authorities; and
- universities, public colleges and technical institutions.

For a detailed list see the definitions of:

- educational body **(section 1(1)(d))**;
- health care body **(section 1(1)(g))**; and
- local government body **(section 1(1)(i))**.

OBTAINING ACCESS TO RECORDS

The first fundamental principle of the *Act* concerns access to records of a public body.

Anyone may request access to a record. To obtain access to a record the applicant will make a written request to the public body that he or she believes has custody or control of it **(section 6(1))**.

To assist the applicant in finding the appropriate body, the ***Alberta Directory*** has been developed for government departments, boards and agencies and a ***Directory of Records*** will be developed for local public bodies **(section 82)**.

Applications for access may either be made on a *Request for Access to Information Form* or by letter, with the applicant providing as much detail as possible about the record to enable the public body to find it **(section 7(2))**.

Oral requests may be made in certain situations, such as when the applicant's ability to read or write in English is limited, or a physical disability or condition impairs the applicant's ability to make a written request (*FOIP Regulation,* **section 4).**

The applicant may either ask for a copy of the record or to examine the record **(section 7(3))**.

Sometimes only a part of a record is accessible because of the exceptions to disclosure under the *Act*. A public body must release as much of the record as it can so long as the disclosed portions of the record can reasonably be severed from the excepted portions **(section 6(2))**.

An applicant may indicate in a request that he or she wishes to have the request continue to have effect for a period of up to 2 years in cases, for example, where the public body produces the requested records on a regular basis **(section 8)**.

The head of a public body has a duty to make every reasonable effort to assist applicants and to respond openly, accurately and completely **(section 9(1))**.

A record must be created from a record in electronic form if it can be done by the public body using its normal computer hardware and software and technical expertise, and creating the record would not unreasonably interfere with the operations of the public body **(section 9(2))**.

A request must be responded to within 30 days unless the time limit has been extended or the request is transferred to a more appropriate public body for response **(sections 10, 13** and **14)**.

A critical part of the access process is the rules setting out how a public body must respond to an applicant. An applicant must be told whether or not access will be given and if access will be given, when and how it will be given. If access is refused, the applicant must be given reasons for the refusal as well as the name and address of a person who can answer questions about the refusal. In addition, the applicant must be told that he or she may request a review of the decision by the Information and Privacy Commissioner **(section 11)**.

Only in very limited cases may a public body refuse to confirm or deny the existence of a record such as the existence of law enforcement records or where the disclosure of records may be harmful to the applicant or any other person **(section 11(2)).**

Where access is to be granted, a public body must provide a copy of the record if requested and the copy can reasonably be reproduced. Otherwise the person will be able to examine the record **(section 12)**.

The head of a public body may require that the person be given a copy of the record, rather than the opportunity to examine it, if providing for the examination would unreasonably interfere with the operations of the public body or might result in the disclosure of information that is restricted or prohibited from disclosure *(FOIP Regulation*, **section 3**).

FEES

Fees may be required for services provided to an applicant under the *Act* **(section 87)**. The *FOIP Regulation* establishes a structure and maximum rates for charging fees under the *Act* for general records and personal information. The rates cited in the *Regulation* may be confirmed or lower rates may be adopted by local public body by-law or resolution. Basically, fees may be assessed regarding general records for:

- locating, retrieving and producing the record;
- computer and programming time for producing electronic records;
- preparing the record for disclosure;
- copying records for release;
- supervising the inspection of records; and
- shipping charges.

The *FOIP Regulation* provides for a $25 initial fee for one-time requests, a $50 initial fee for continuing requests and fees where the costs of processing requests for general records exceed $150.

When an applicant is requesting personal information about him or herself, the *Act* requires that there is no charge except for providing a copy of that individual's information. The *FOIP Regulation* stipulates that no fee will be assessed for copying costs for an applicant's own personal information unless the costs exceed $10.

If an applicant is required to pay fees for services, the public body must provide an estimate of those fees before providing those services **(section 87(3))**. Processing of the request then ceases until the applicant agrees to pay the fee and deposits 50% of the estimated fee. The balance of the fee is payable when the information is available for delivery to the applicant **(***FOIP Regulation,* **section 13)**.

The head of a public body or the Commissioner may excuse an applicant from paying all or part of a fee where:

- the applicant cannot afford to pay; or
- for any other reason it would be fair to excuse the fee; or
- the record relates to a matter of public interest including the environment, public health or safety **(section 87(4))**.

Overall, the *Act* requires that fees charged may not exceed the actual costs of the services provided **(section 87(5))**.

EXCEPTIONS TO DISCLOSURE

Every access to information scheme recognizes that an absolute rule of openness with respect to records of a public body would impair the ability of the public body to discharge its responsibilities effectively. This philosophy is reflected in the *Act* by very specific and limited exceptions to the general rule of public access to information held by a public body **(sections 15 to 28)**.

Most of the exceptions are discretionary allowing a public body through its head or designated official to release or withhold information.

Only five very important exceptions specify under what circumstances a public body must refuse access to records. These are where the record concerns:

1) commercial information of a third party including information on a tax return **(section 15)** (a third party being someone other than the applicant or a public body **(section 1(1)(r))**;
2) personal information about a third party **(section 16)**;
3) law enforcement information, but only if federal law would make it an offence to release the information **(section 19(3))**;
4) Cabinet and Treasury Board confidences **(section 21)**; or
5) information subject to any type of legal privilege that relates to a person other than a public body **(section 26(2))**.

EXCEPTIONS TO ACCESS

Disclosure of third party commercial information (section 15)

This mandatory exception applies to third party trade secrets or financial, commercial, scientific, technical or labour relations information supplied implicitly or explicitly in confidence to a public body.

The exception only applies where disclosure could reasonably be expected to:

- harm significantly the competitive position or interfere significantly with the negotiating position of the third party;
- result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied;
- result in undue financial loss or gain to any person or organization; or
- reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

However, a public body may disclose this information if the third party consents or any other law allows disclosure, the information relates to a non-arm's length transaction between the Government of Alberta and another party or the information is in the Provincial Archives of Alberta or the archives of a public body and 50 years has passed since its creation.

Disclosure of personal information that is an unreasonable invasion of a third party's privacy (section 16)

A public body must refuse to disclose personal information that would be an unreasonable invasion of a third party's personal privacy.

The *Act* sets out specific situations where this is presumed, such as where the personal information is medical information, relates to income assistance, employment or educational history, was collected on a tax return and so on **(section 16(2))**.

The section sets out relevant circumstances that a head must take into account in assessing the issue of "unreasonable invasion" of privacy **(section 16(3))**.

It is recognized, however, that there are situations where personal information should be accessible such as where the third party consents in writing, a law authorizes disclosure, the information concerns salary ranges or classification of public employees and so on **(section 16(4)).**

Where disclosure could reasonably be expected to threaten a person's health or safety (section 17)

This exception covers two situations: information the release of which could harm the applicant and information the release of which could harm someone else. Where the disclosure of information could threaten anyone else's mental or physical health or interfere with public safety, the exception may be used. Where the information concerns the applicant, a physician, chartered psychologist, psychiatrist or any other appropriate expert must give an opinion as to whether it could or could not harm the applicant.

Confidential evaluations (section 18)

This exception permits a public body to refuse disclosure of personal information about an applicant that is evaluative or opinion material compiled solely to determine a person's suitability, eligibility or qualifications for employment, government contracts or other benefits.

Disclosure harmful to law enforcement (section 19)

Specific and limited exceptions are set out for law enforcement information. Law enforcement is defined to include not only policing but also situations where an investigation or proceeding could lead to a penalty or sanction being imposed **(section 1(1)(h))**. This would include most investigations or proceedings of a regulatory nature but would exclude internal labour relations and disciplinary proceedings.

Most of the provisions of this exception are subject to discretionary disclosure by the public body except as noted where a federal law makes it an offence for a record of this nature to be disclosed **(section 19(3))**.

Reports of routine inspections or statistical reports are not covered by the exception **(section 19(4))**.

Reasons for a decision not to prosecute, if the investigation was not made public, may be disclosed to significantly interested persons, including the victim, and if the fact of the investigation is made public to any

other member of the public **(section 19(5))**.

Disclosure harmful to intergovernmental relations (section 20)

Disclosure may only occur where the consent is given by the Minister responsible for the *Act*, in consultation with Cabinet, unless the information relates to confidential information received from another government, including other local government bodies, in which case that other government must consent to the disclosure.

The section does not apply to information that has been in existence for 15 years or more **(section 20(4))**.

Cabinet and Treasury Board confidences (section 21)

Requests for information about the substance of deliberations of Cabinet and Treasury Board or any of their committees shall be refused access by a head of a public body.

Included in this exception are advice, recommendations, policy considerations and draft legislation or regulations submitted or prepared for submission to Cabinet or Treasury Board or any of their committees.

The section does not apply to:

- information in existence for 15 years or more;
- information in a record as part of an appeal to Cabinet or any of its committees; or
- background facts in a record for consideration in making a decision if the decision has been made public, the decision has been implemented or 5 years have passed since the decision was made or considered.

Local public body confidences (section 22)

See definition of local public body **(section 1(1)(j))**.

This exception permits a local public body to refuse to disclose information if the disclosure could reasonably be expected to reveal:

- draft resolutions, by-laws and other instruments by which a local public body acts, as well as
- the substance of deliberations of in camera meetings of elected officials, a governing body or its committees which are authorized by an Act or regulation under this *Act*.

The section does not apply to draft by-laws or other instruments that have been the subject of a public meeting or information that has been in existence for 15 years or more.

Advice from officials (section 23)

This exception recognizes that there is a public interest in not permitting unlimited access to records relating to policy development and decision-making in public bodies. It recognizes that there must be candid discussions, deliberations and the like so as not to impair the workings of public bodies.

It should be noted that there are a number of situations where the exception does not apply such as where the information is over 15 years old; the information relates to reasons given by a public body in the exercise of a discretionary power or judicial function; in some cases where the information is the result of product or environmental testing or is a statistical survey; the information is scientific or technical background research; and the like **(section 23(2))**.

Commercial information of a public body (section 24)

This exception mirrors in many ways the commercial exception that applies to third parties. It permits a public body to refuse disclosure of information if it could reasonably be expected to harm its economic interest. Examples of such information are:

- trade secrets;
- financial, commercial, scientific, technical or other information in which a public body has a proprietary interest or a right to use and that has, or is likely to have, monetary value; and
- information the disclosure of which could reasonably be expected to result in financial loss to, prejudice the competitive position of, or interfere with contractual or other negotiations of the public body.

This exception does not apply to certain product or environmental testing results.

Testing or audit procedures and details of specific tests or audits to be conducted (section 25)

This exception is limited to only those situations where disclosure can reasonably be expected to prejudice the use or results of particular tests or audits.

Privileged information (section 26)

This exception is designed to ensure that information of a privileged legal nature is excepted from disclosure much as it would be for any citizen of the province.

Disclosure harmful to heritage sites and endangered forms of life (section 27)

The preservation of such things as historic resources and rare, endangered, threatened or vulnerable forms of life is an important public concern. This exception applies only where the disclosure of information could reasonably be expected to result in damage to or interfere with the

conservation of historic resources or those forms of life.

Information available to the public and information to be available at a future date (section 28)

Often many records that may be the subject of an application under the *Act* are already available to the public or are about to be made available to the public. Additional expense and efforts by a public body might follow if a request for access under this *Act* were allowed.

This exception permits a public body to use other channels for making such information available to the applicant. Information must already be available to the public or at least be so within 60 days for this exception to be applicable. The section provides for what happens if information to be published in 60 days is not published within that time period.

RIGHTS OF THIRD PARTIES

On a number of occasions a record requested may involve information about a third party. This is especially so when it involves third party personal information and third party commercial information. A third party is someone other than an applicant or a public body **(section 1(1)(r))**. The *Act* tries to strike a balance between the interests of the third party and the rights of an applicant.

The head of a public body is required to notify the third party and provide the third party with a copy of the record if the head is considering giving access to information that may fall under the exceptions dealing with third party commercial information or third party personal privacy. The third party must within 20 days consent to the disclosure or make representations explaining why the disclosure should not be made **(section 29(3))**.

The applicant must also be given notice that third party interests may be affected **(section 29(4))**.

A decision as to whether or not disclosure will be given must be made within 30 days of the notice to the third party. Both the third party and the applicant are notified of the decision to be taken. If it is proposed to release the record, the third party has 20 days to ask the Information and Privacy Commissioner to review the decision **(section 30)**.

An applicant has 60 days to ask the Commissioner for a review if the public body decides not to give access to a record **(sections 30** and **63(2)(a))**.

PUBLIC INTEREST OVERRIDE

Whether or not a request is made, the head of a public body is obligated to disclose information about a risk of significant harm to the environment or to the health and safety of the public or to other matters clearly in the public interest **(section 31(1))**.

This provision overrides any other provision of the *Act* including the mandatory exceptions **(section 31(2))**.

This section also includes provisions for notice to affected third parties **(sections 31(3)** and **(4)).**

PROTECTION OF PRIVACY

The *Act* recognizes the extreme importance that Albertans place on the privacy of information about themselves that may be in the hands of a public body. It should be noted that **Part 2** of the *Act* is completely separate from the access provisions in **Part 1** of the *Act*. **Part 2** deals with how a public body must collect, use and disclose personal information on a day-to-day basis.

Fundamental principles 2, 3 and 4 of the *Act* are directed at ensuring that the desires for privacy of Albertans are met yet at the same time balancing the legitimate needs of public bodies and others.

Personal information is extensively defined in the *Act* **(section 1(1)(n))** and includes, but is not limited to:

- the individual's name, home or business address or home or business telephone number;
- the individual's race, national or ethnic origin, colour or religious or political beliefs or associations;
- the individual's age, sex, marital status or family status;
- an identifying number, symbol or other particular assigned to the individual;
- the individual's fingerprints, blood type or inheritable characteristics;
- information about the individual's health and health care history, including information about a physical or mental disability;
- information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given;
- anyone's opinion about the individual; and
- the individual's personal views or opinions, except if they are about someone else.

Division 1 of **Part 2** provides rules as to how and for what purpose public bodies can collect personal information. The right of an individual to seek correction of personal information and the obligations of public bodies in regard to the protection, accuracy and retention of personal information are also provided in **Division 1** of **Part 2**.

The provisions governing the use and disclosure of personal information by public bodies are found in **Division 2** of **Part 2**. Disclosure of personal information to the person the information is about is governed by the access provisions of the *Act*. Disclosure of personal information outside of the access provisions of the *Act*, for research purposes and in other cases, is governed by **Division 2** of **Part 2** of the *Act*.

COLLECTION OF PERSONAL INFORMATION

Personal information cannot be collected by a public body from an individual unless it is expressly authorized by an Act or a regulation; it relates to law enforcement; or, it is necessary for an operating program or activity of the public body **(section 32)**. The individual, except in certain defined cases, must be told of the purpose of the collection, the specific

legal authority for the collection and information on who can answer questions about the collection **(section 33(2))**.

Personal information must be collected directly from the individual the information is about except in certain specifically defined circumstances such as where the individual has consented to indirect collection, another method of collection is authorized under an Act, it is collected for the purpose of law enforcement and so on **(section 33)**.

Public bodies also have a duty to ensure that reasonable security arrangements are maintained for personal information in their possession **(section 36)**.

USE OF PERSONAL INFORMATION

A public body may use personal information it collects from individuals only for the purpose for which it was obtained or a consistent purpose; for another purpose with the consent of the individual; or, for purposes allowed under the disclosure sections of the *Act* **(section 37)**. A consistent purpose is a purpose which has a reasonable and direct connection to the purpose for which the information was collected and is necessary for an operating program or statutory duty **(section 39)**.

Every reasonable effort must be made by a public body to ensure the personal information it uses is accurate and complete **(section 34(a))**. It is a fundamental principle that an individual has a right of access to his or her own personal information (subject to very narrow exceptions) and to request a correction of information that the individual believes may contain an error or omission. The public body must either make the correction or at least make note of the request on the data subject file. In either case the public body must notify the individual concerned within 30 days of the action taken **(section 35)**.

The public body must also notify any other public body or third party to whom the personal information has been disclosed in the year prior to the correction or notation. Because of the right to request a correction and the individual's right of access to information about himself or herself, a public body must retain information it uses for at least one year after it has been used **(section 34(b))**.

DISCLOSURE OF PERSONAL INFORMATION

Specific rules are set out in the *Act* to ensure that an individual's personal information is not disclosed beyond what is required for the proper operations of a public body, or for the legitimate interests of researchers and others.

Under the access provisions of the *Act* there are, as noted earlier, significant limitations on third parties obtaining access to the personal information of another individual **(section 16)**.

Section 38 provides for specific and limited situations where a public body may disclose personal information without an access request. Only in very restricted situations may personal

information be disclosed such as where it is used for a consistent purpose; where the individual consents to disclosure; where another Act or regulation of Alberta or Canada authorizes or requires disclosure; for complying with a court order, for complying with a law of Alberta or Canada; to a relative of a deceased individual; and so on.

Disclosure for research purposes is rigorously constrained in **section 40** by requiring researchers to show that:

- their research cannot be accomplished without individually identifiable information;
- there is a public interest in any record linkage that might occur and this will not harm the individuals concerned;
- appropriate security arrangements are made for its use and disclosure; and
- they have signed agreements requiring them to comply with these and other conditions regarding disclosure.

In addition, **section 8** of the *FOIP Regulation* sets out very specific requirements which must be included in researcher agreements and provides that if a person fails to meet the conditions of the agreement, it may be immediately cancelled and the person may be guilty of an offence under **section 86(1)** of the *Act*.

The Provincial Archives of Alberta and the archives of a public body may also disclose personal information for research purposes if the disclosure would not be an unreasonable invasion of personal privacy under **section 16**; the disclosure is in accordance with **section 40**; the information is about someone who has been dead for 25 years or more; or, the information is in a record that has been in existence for 75 years or more **(section 41)**.

ROLE OF THE INFORMATION AND PRIVACY COMMISSIONER

The last fundamental principle of the *Act* is reflected in the provisions for the appointment of an independent Information and Privacy Commissioner **(Part 3)**.

The Commissioner has a broad range of powers under the *Act* including the power to conduct investigations to ensure compliance with the *Act* or compliance with rules concerning the destruction of documents contained in an enactment or by-law, to inform the public about the *Act*, to engage in research as well as the power to investigate and attempt to resolve complaints that a duty to assist the public has not been performed, or to determine that a fee is inappropriate and so on **(section 51)**.

The Commissioner may also give advice and recommendations to heads of public bodies on matters concerning the *Act* **(section 52)**.

The Commissioner has the power to authorize a public body to disregard requests **(section 53)** and has broad powers in conducting investigations **(section 54)**. In addition, the *Act* protects statements made to the Commissioner from being used as evidence in a legal proceeding **(section**

55); provides that anything said to the Commissioner is privileged **(section 56)**; restricts disclosure of information by the Commissioner and his staff **(section 57)**; and provides for an annual report by the Commissioner **(section 61)**.

The Commissioner's major role is to consider complaints. A request for a review may be made by a person who makes a request to the head of a public body for access to a record or for correction of personal information in connection with any decision, act or failure to act by the head of a public body; by a third party in connection with any decision made by the head; by a person who believes that personal information about that person is being collected, used or disclosed contrary to the *Act*; or by a person who has been refused information about a relative under **section 38(aa) (section 62)**.

A written request for a review must normally be made to the Commissioner within 60 days after the head's decision **(section 63)**. A third party has only 20 days to request a review under **section 30(4)**. Comprehensive rules are provided in the *Act* to regulate the conduct of a review **(sections 64** to **67)**.

On completion of a review, the Commissioner may make a wide range of orders including requiring a head to give access to a record; confirming the decision of a head; requiring duties under the *Act* to be performed; confirming or reducing time extensions under **section 13** and so on. Terms and conditions of the order can be specified by the Commissioner and a copy of the order may be filed in the Court of Queen's Bench **(section 68)**. An order of the Commissioner is final **(section 69)**.

Within 30 days of receiving an order of the Commissioner, the head of the public body concerned must comply with the order unless an application for judicial review is taken **(section 70)**.

DISCLOSURE TO THE COMMISSIONER

Section 77 allows an employee of a public body to disclose to the Commissioner any confidential information that the employee acting in good faith believes ought to be disclosed under the public interest override provision of the *Act* **(section 31)** or that is being collected, used or disclosed in violation of the privacy provisions of the *Act* **(Part 2)**.

The Commissioner must investigate such disclosures **(section 77(2))** and must not disclose the name of the employee without the employee's consent **(section 77(3))**.

An employee acting in good faith is protected from prosecution for copying or disclosing the information **(section 77(4))** and is protected from any adverse employment action **(sections 77(5)** and **(6))**

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The Commissioner is given the same broad powers of investigation and order making powers as he would otherwise have under the *Act* **(section 77(7))**.

OFFENCES

Several offences are provided for under the *Act*, including prohibitions on:

- collection, use or disclosure of personal information in violation of **Part 2**;
- making a false statement to or misleading or attempting to mislead the Commissioner or another person in the performance of the duties, powers or functions of the Commissioner or the other person under the *Act*;
- obstructing the Commissioner or another person in the performance of the duties, powers or functions of the Commissioner or the other person under the *Act*;
- failing to comply with an order made by the Commissioner; or
- destroying any records subject to the *Act* with the intent to evade a request for access to the records.

A person who is guilty of an offence is liable to a fine of not more than $10,000 **(section 86)**.

WHAT ELSE IS IN THE ACT?

- How notice is to be given under the *Act* **(section 78)**.
- How a right of an individual can be exercised by someone else such as a guardian, trustee or personal representative **(section 79)**.
- The power to delegate by the head of a public body **(section 80)**.
- Annual report of the Minister responsible for the *Act* **(section 81)**.
- A power in a head of a public body to specify records that are available without the need for a request **(section 83)**.
- Rules governing proceedings against the heads of public bodies or anyone acting for or under the direction of a head **(section 85)**.
- A regulation making power **(section 88)**.
- A power in local public bodies to make by-laws to do various things such as designating the head of the public body, delegating powers and so on **(section 89)**.
- A statement that the *Act* applies to records created both before and after the *Act* came into force **(section 90)**.
- A provision for review of the *Act* after 3 years of its coming into force by a special committee of the Legislative Assembly **(section 91)**.